

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment.

The Conference Report includes the following provisions:

Section 1. Short Title; Table of Contents.

The short title of this legislation is “Terrorism Risk Insurance Act of 2002.”

Title I – Terrorism Insurance Program

Section 101. Congressional Findings and Purpose.

Following the widespread financial market uncertainties due to the terrorist attacks of September 11, 2001, Congress determined that there was a need for a temporary Federal program to establish a system of shared public/private compensation for insured losses resulting from acts of terrorism to protect consumers and create a transitional period for the private insurance markets to stabilize.

Section 102. Definitions.

Section 102 defines terms necessary for implementation of this legislation. The Federal backstop is triggered when the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General, certifies that an event meets the definition of an act of terrorism. The legislation only applies to U.S. risks, including domestic air carriers and flag vessels, U.S. territorial seas and continental shelf, and U.S. missions. The legislation applies only to acts that are committed by an individual or individuals acting on behalf of a foreign person or foreign interest.

The terms “affiliate” and “control” are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums. The term “insured loss” includes losses resulting from an act of terrorism (and from an act of war in the case of workers compensation). Each insurer will be responsible for paying out a prescribed amount of insured losses, the “insurer deductible,” before Federal assistance becomes available. This deductible is based on a percentage of direct earned premiums from the previous calendar year. Insurers’ deductibles are 1% during a transition period for the remainder of 2002, 7% in 2003, 10% in 2004, and 15% in 2005. Except as otherwise specifically provided, the Conferees intend the legislation to apply only to primary and excess commercial property and casualty insurance (including cyber-terrorism and business interruption coverage).

Section 103. Terrorism Insurance Program.

The Terrorism Insurance Program is established in the Department of the Treasury under which the Federal government will share the risk of loss from future terrorist attacks with the commercial property and casualty insurance marketplace, for a temporary period of time. The Secretary of the Treasury (hereafter “Secretary”) shall administer the Program

and pay the Federal share of compensation for insured losses. The Federal government pays 90% of insured losses in excess of an insurer's deductible, while the insurer pays 10%. Insurers may reinsure their insurer deductibles and 10% co-shares. Losses covered by the Program will be capped at \$100 billion per year; above this amount, Congress is to determine the procedures for and the source of any payments.

Before receiving Federal assistance under this Act, an insurer must certify its claim for payment of insured losses, that a policyholder (or person acting on the policyholder's behalf) has filed a claim for such loss, and the insurer's compliance with the Act. The Secretary may not reimburse an insurer for such losses unless the insurer has provided clear and conspicuous disclosure to the policyholder of the premium charged for terrorism coverage and the Federal share of compensation. This disclosure to the policyholder must occur at the time of offer, purchase, and renewal of the policy for policies issued after the date of enactment, and must be made on a separate line item in the policy with respect to policies issued more than 90 days after enactment. For policies issued before the date of enactment, the disclosure must be made within 90 days of such date. The Conferees intend this disclosure to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with the insurers, thereby reducing the insurers' exposure. Insurers must submit premium and claims information to the Secretary who may investigate and audit all claims under the Program.

Each entity meeting the definition of insurer under this legislation is required to participate in the Program. During the first two years of the Program each such insurer must make available in all of its property and casualty insurance policies coverage for insured losses, and shall make such coverage available on terms that do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. The Secretary has discretion to extend this requirement to the third year of the Program, to preserve this important option for policyholders.

Section 103 provides for insurance marketplace retentions of \$10 billion in Program year 1 (including any remainder of 2002), \$12.5 billion in Program year 2, and \$15 billion in Program year 3. Federal assistance within the retention above the insurer deductibles and 10% co-shares must be recouped while additional amounts of Federal assistance may be recouped based on economic factors in the judgment of the Secretary. Mandatory recoupment within the insurance marketplace retention is through terrorism loss risk-spreading premiums (surcharges) paid by all commercial property and casualty policyholders based on premium rates with any year's surcharge (mandatory and discretionary combined) capped at 3% of the premium charged for property and casualty insurance coverage under the policy in each such year. The Secretary has discretion over the timing of recoupment, and to adjust amounts for urban, smaller commercial, and rural areas, as well as for different lines of insurance, so long as the mandatory amounts are

ultimately recouped. The Secretary may assess civil penalties on insurers for submission of false or misleading information or failure to repay the Secretary for any amount required to be repaid, or for other failure to comply with the provisions of this title.

This section directs the Secretary to apply the provisions of the legislation to State residual market insurance entities and State workers compensation funds. The Secretary is directed to either treat State residual market insurance entities as separate insurers, or to calculate the premiums, losses, and Federal backstop based on each insurer's share of the entity, imputing such amounts as part of their total business. This calculation would apply to all insurers that participate in such entities, regardless of whether they otherwise provide commercial property and casualty insurance as set forth in the legislation. This section further gives the Secretary discretion to apply the legislation to various classes of captives and self-insurance programs (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools).

The Secretary is also directed to conduct an expedited study to determine whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to group life insurers and whether the threat of terrorism is reducing the availability of group life insurance for consumers. Should the Secretary determine that terrorism coverage is not or will not be reasonably available to insurers and consumers, the Secretary would be required to include group life insurance in the Terrorism Insurance Program. In so doing, the Secretary would have discretion to determine the most appropriate way to include group life insurance in the Program.

The Secretary, after consultation with the NAIC, is to conduct a study of the potential effects of acts of terrorism on the availability of life insurance generally and other lines of insurance coverage, including personal lines, to be submitted to Congress not later than 9 months from the date of enactment.

Section 104. General Authority and Administration of Claims.

The Secretary shall have the powers and authorities necessary to carry out the Program. The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year. To the extent that such information is not otherwise available, the Secretary may require insurers to submit their terrorism risk insurance premium rates to the NAIC, which shall make such information available to the Secretary.

Section 105. Preemption and Nullification of Pre-Existing Terrorism Exclusions.

This section voids any commercial property and casualty terrorism insurance exclusion that is in force on the date of the enactment of this Act to the extent that it excludes losses that would otherwise be insured losses. Any State approval of any commercial property and casualty terrorism insurance exclusion in force on the date of enactment is also void to the extent that it excludes losses that would otherwise be insured losses. This provision is intended to create immediate terrorism coverage for commercial property and casualty policyholders upon enactment for a short window of time, while

allowing insurers to immediately send notices of the increased premium for such coverage and giving policyholders the option within 30 days of such notice to pay such increased premium or allow reinstatement of any preexisting terrorism exclusion.

Section 106. Preservation Provisions.

This section preserves State regulatory authority except as specifically provided in this legislation. A uniform definition of a terrorist act is established in this legislation. Until the end of 2003, States would be required to allow rate and form changes to take effect immediately but would retain authority to disapprove any rates as excessive, inadequate, or unfairly discriminatory and where a State has prior approval authority for forms, subsequent review of such forms is permitted. During the period in which the Secretary's authority to carry out the Program is in effect, the Secretary would have access to any books and records of insurers that are relevant to the Program.

Section 107. Litigation Management.

The Conferees agreed to a provision on litigation management.

Section 108. Termination of Program.

This section provides a three-year program (with a transition period for the balance of 2002) that terminates on December 31, 2005. The Secretary shall conduct a study and report to Congress no later than June 30, 2005 on the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

Title II – Treatment of Terrorist Assets

Section 201. Satisfaction of Judgements from Blocked Assets of Terrorists, Terrorist Organizations, and State Sponsors of Terrorism.

The purpose of Section 201 is to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties. It is the intent of the Conferees that Section 201 establish that such judgments are to be enforced. Section 201 builds upon and extends the principles in section 1610(f)(1) of the Foreign Sovereign Immunities Act (28 U.S.C. §1610(f)(1)), authorizes the enforcement of judgments against terrorist organizations and eliminates the effect of any Presidential waiver issued prior to the date of enactment purporting to bar or restrict enforcement of such judgments, thereby making clear that all such judgments are enforceable against any assets or property under any authorities referenced in Section 1610(f)(1).

Section 201(c) establishes a special rule for cases against Iran. In Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (2000 Act), Congress directed that specified claimants against Iran under Section 1605(a)(7) of the Foreign

Sovereign Immunities Act receive payment in satisfaction of judgments. Unfortunately, several victims and families of victims who brought suit against Iran, were left out of the 2000 Act. The Conferees has sought to correct this injustice.

In order to accommodate additional dates within the equitable formula for payment of remaining amounts in the accounts and rental proceeds, the Conferees added to Section (c) an adjustment to the proportional formula for payment to qualifying claimants.

In Section 201 (d), the Conferees broadened the definition of “act of terrorism” for purposes of that section; defined the term “blocked assets”; and clarified the term “terrorist organization” to mean any entity included in the definition provided in Section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, (8 U.S.C. § 1182(a)(3)(B)(vi)). This provision is intended to reach terrorist organizations.

Title III – Federal Reserve Board Provisions

Section 301. Certain Authority of the Board of Governors of the Federal Reserve System.

The Conferees agreed to certain changes to Section 11 of the Federal Reserve Act.